

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 222

HOUSE BILL 2256

AN ACT

AMENDING SECTIONS 40-360.21, 40-360.22, 40-360.23, 40-360.24, 40-360.26, 40-360.28, 40-360.30 AND 40-360.32, ARIZONA REVISED STATUTES; RELATING TO UNDERGROUND FACILITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 40-360.21, Arizona Revised Statutes, is amended to
3 read:

4 40-360.21. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Abandoned" means no longer in service and physically disconnected
7 from a portion of the facility, or from any other facility, that is in use or
8 still carries service.

9 2. "BUILDING OFFICIAL" MEANS THE OFFICER EMPLOYED BY A POLITICAL
10 SUBDIVISION OF THIS STATE AND CHARGED WITH THE ADMINISTRATION AND ENFORCEMENT
11 OF A BUILDING CODE TO REGULATE THE QUALITY, TYPE OF MATERIAL AND WORKMANSHIP
12 OF CONSTRUCTION OF BUILDINGS OR STRUCTURES.

13 ~~2-~~ 3. "Careful and prudent manner" means conducting excavation in
14 such a way that when it is within twenty-four inches of the underground
15 facility located and marked, ~~by the owner or~~ UNDERGROUND FACILITIES
16 operator, by stakes, paint or in some customary manner, the exact location is
17 manually determined, and the uncovered facility is supported and protected.

18 ~~3-~~ 4. "Cross culverts or similar roadway drainage facilities" means
19 transverse drainage structures ~~where~~ WITH both ends or openings ~~are~~ visible,
20 and ~~which~~ includes box culverts, drainage pipes or other covered structures.

21 5. "DETECTIBLE UNDERGROUND LOCATION DEVICE" MEANS ANY DEVICE THAT IS
22 INSTALLED UNDERGROUND AND THAT IS CAPABLE OF BEING DETECTED FROM ABOVE GROUND
23 WITH AN ELECTRONIC LOCATING DEVICE.

24 ~~4-~~ 6. "Excavation" means any operation in which earth, rock or other
25 material in the ground is moved, removed or otherwise displaced by means or
26 use of any tools, equipment or explosives and includes, without limitation,
27 grading, trenching, digging, ditching, drilling, augering, BORING,
28 tunnelling, scraping, cable or pipe plowing and driving.

29 ~~5-~~ 7. "Implied easement" means any easement or right-of-way on
30 private property required to provide utility services by means of underground
31 facilities ~~on~~ IN property of the owner requesting such service.

32 ~~6-~~ 8. "Inactive" means:

33 (a) That portion of an underground facility that is not in use but is
34 still connected to the facility, or to any other facility, that is in use or
35 still carries service.

36 (b) A new underground facility that has not been connected to any
37 portion of an existing facility.

38 ~~7-~~ 9. "Installation records of an underground facility" means maps,
39 drawings, diagrams, surveys, schematics, illustrations, sketches or any other
40 depictions or descriptions of an underground facility that reflect the
41 location at the time of installation of the underground facility and any
42 surface extensions in a reasonably accurate manner.

1 ~~8-~~ 10. "Locator strip" means a TYPE OF DETECTIBLE UNDERGROUND
2 LOCATION DEVICE THAT CONSISTS OF A plastic or other durable material ribbon
3 containing a material capable of being detected from above ground with an
4 electronic locating device and color coded by type of underground facility.

5 ~~9-~~ 11. "Locator wire" means a TYPE OF DETECTIBLE UNDERGROUND LOCATION
6 DEVICE THAT CONSISTS OF A copper wire or metallic, conductive, noncorrosive
7 trace wire capable of being detected from above ground with an electronic
8 locating device.

9 ~~10-~~ 12. "One-call notification center" means an organization of owners
10 or operators of ~~buried~~ UNDERGROUND facilities ~~which~~ THAT provides a telephone
11 number notification service for the purpose of receiving and distributing to
12 its members advance notifications from persons regarding planned excavations.

13 ~~11-~~ 13. "Person" means any individual, firm, joint venture,
14 partnership, corporation, association, municipality, governmental unit,
15 department or agency and shall include any trustee, receiver, assignee or
16 personal representative thereof.

17 ~~12-~~ 14. "Routine road maintenance grading" means the routine grading
18 or resurfacing of the concrete, asphaltic or composite surface but not the
19 subbase of a roadway by the state or a political subdivision of the state for
20 the purpose of maintaining the surface condition of the road and includes
21 recovery of material from a borrow ditch.

22 ~~13-~~ 15. "Stakes, paint or in some customary manner" means marking the
23 location of an underground facility by the colors established by the
24 commission. These colors shall be restricted to the underground facility
25 location.

26 16. "UNDERGROUND FACILITIES OPERATOR" MEANS A PUBLIC UTILITY, MUNICIPAL
27 CORPORATION OR OTHER PERSON HAVING THE RIGHT TO BURY UNDERGROUND FACILITIES
28 IN ANY PUBLIC STREET, ALLEY, RIGHT-OF-WAY DEDICATED TO THE PUBLIC USE OR
29 UTILITY EASEMENT OR PURSUANT TO ANY EXPRESS OR IMPLIED PRIVATE PROPERTY
30 EASEMENT. UNDERGROUND FACILITIES OPERATOR DOES NOT INCLUDE A HOMEOWNER THAT
31 OWNS A SEWER FACILITY IN A PUBLIC STREET, ALLEY, RIGHT-OF-WAY DEDICATED TO
32 PUBLIC USE OR UTILITY EASEMENT.

33 ~~14-~~ 17. "Underground facility" means any item of personal property
34 that is buried or placed below ground for use in connection with the storage
35 or conveyance of water, sewage, electronic, telephonic, or telegraphic
36 communications, electric energy, oil, gas or other substances, and shall
37 include but not be limited to pipes, sewers, conduits, cables, valves, lines,
38 wires, manholes, attachments and those portions of poles and their
39 attachments below ground except cross culverts or similar roadway drainage
40 facilities and landscape irrigation systems of ~~one-inch~~ TWO INCHES in
41 diameter or less ~~located in dedicated public rights-of-way or a state~~
42 ~~highway.~~

1 Sec. 2. Section 40-360.22, Arizona Revised Statutes, is amended to
2 read:

3 40-360.22. Excavations; determining location of underground
4 facilities; providing information; excavator
5 marking; on-site representative; validity period
6 of markings; liability for misuse of locate
7 requests; detectible underground locating devices;
8 civil penalty

9 A. A person shall not make or begin any excavation in any public
10 street, alley, right-of-way dedicated to the public use or utility easement,
11 ~~or on~~ IN any express or implied private property utility easement, without
12 first determining whether underground facilities will be encountered, and if
13 so where they are located from each and every ~~public utility, municipal~~
14 ~~corporation or other person having the right to bury such underground~~
15 ~~facilities within the public street, alley, right-of-way or utility easement~~
16 UNDERGROUND FACILITIES OPERATOR and taking measures for control of the
17 facilities in a careful and prudent manner.

18 B. ~~Every public utility, municipal corporation or other person having~~
19 ~~the right to bury~~ underground facilities OPERATOR shall file with the
20 corporation commission the job title, address and telephone number of the
21 person or persons from whom the necessary information may be obtained. Such
22 person or persons shall be readily available during established business
23 hours. The information on file shall also include the name, address and
24 telephone number of each one-call notification center to which the ~~owner of~~
25 ~~the facility~~ UNDERGROUND FACILITIES OPERATOR belongs. Upon receipt of
26 inquiry or notice from the excavator, the ~~owner of the facility~~ UNDERGROUND
27 FACILITIES OPERATOR shall respond as promptly as practical, but in no event
28 later than two working days, by marking such facility with stakes, paint or
29 in some customary manner. No person shall begin excavating before the
30 location and marking are complete or the excavator is notified that marking
31 is unnecessary. IF THE EXCAVATOR CONSENTS, AN UNDERGROUND FACILITIES
32 OPERATOR MAY NOTIFY THE ONE-CALL NOTIFICATION CENTER THAT MARKING IS
33 UNNECESSARY PURSUANT TO A METHOD ESTABLISHED BY THE ONE-CALL NOTIFICATION
34 CENTER. AN UNDERGROUND FACILITIES OPERATOR MAY DELEGATE ANY MARKING OR
35 NOTIFICATION OBLIGATIONS REQUIRED BY THIS SUBSECTION TO AN AGENT OR SERVANT
36 OF THE UNDERGROUND FACILITIES OPERATOR. AN UNDERGROUND FACILITIES OPERATOR
37 MAY NOTIFY THE EXCAVATOR THAT MARKING IS UNNECESSARY PURSUANT TO ANY MUTUALLY
38 AGREEABLE METHOD.

39 C. ~~On a~~ timely request by the ~~owner of a facility~~ UNDERGROUND
40 FACILITIES OPERATOR, the excavator shall mark the boundaries of the location
41 requested to be excavated in accordance with a color code designated by the
42 commission or by applicable custom or standard in the industry. A request
43 under this subsection for excavator marking does not alter any other
44 requirement of this section.

1 D. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, in performing the
2 marking required by subsection B of this section, the ~~owner~~ UNDERGROUND
3 FACILITIES OPERATOR of an underground facility installed after December 31,
4 1988 in a public street, alley or right-of-way dedicated to public use, but
5 not including any express or implied private property utility easement, shall
6 locate the facility by referring to installation records of the facility and
7 utilizing one of the following methods:

- 8 1. Vertical line or facility markers.
- 9 2. Locator strip or locator wire.
- 10 3. Signs or permanent markers.
- 11 4. Electronic or magnetic location or tracing techniques.
- 12 5. Electronic or magnetic sensors or markers.
- 13 6. Metal sensors or sensing techniques.
- 14 7. Sonar techniques.
- 15 8. Underground electrical or radio transmitters.
- 16 9. Manual location techniques, including pot-holing.
- 17 10. Surface extensions of underground facilities.

18 11. Any other surface or subsurface location technique THAT IS at least
19 as accurate as the other marking methods in this subsection AND THAT IS not
20 prohibited by the commission or by federal or state law.

21 E. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, for an underground
22 facility other than one installed after December 31, 1988, in a public
23 street, alley or right-of-way dedicated to public use, in performing the
24 marking required by subsection B of this section, the ~~owner~~ UNDERGROUND
25 FACILITIES OPERATOR may refer to installation or other records relating to
26 the facility to assist in locating the facility and shall locate the facility
27 utilizing one of the methods listed under subsection D of this section.

28 F. If an underground ~~facility-owner~~ FACILITIES OPERATOR is unable to
29 complete the location and marking within the time period provided by
30 subsection B of this section, the ~~facility-owner~~ FACILITIES OPERATOR shall
31 satisfy the requirements of this section by providing prompt notice of these
32 facts to the excavator and assigning one or more representatives to be
33 present on the excavation site at all pertinent times as requested by the
34 excavator to provide facility location services until the facilities have
35 been located and marked. The underground ~~facility-owner~~ FACILITIES OPERATOR
36 shall bear all of its own costs associated with assigning representatives.
37 If representatives are assigned under this subsection, the excavator is not
38 responsible or liable for damage to or repair of the ~~owner's~~ UNDERGROUND
39 FACILITIES OPERATOR'S underground facility while acting under the direction
40 of an assigned representative of the ~~owner~~ UNDERGROUND FACILITIES OPERATOR,
41 unless the damage or need for repair was caused by the excavator's
42 negligence.

43 G. The marking required by subsection B of this section is valid for
44 fifteen days from the date of the marking, excluding Saturdays, Sundays and
45 other legal holidays. If the excavation will continue past the validity

period of the marks as provided by this subsection, the excavator shall notify the ~~facility owner~~ UNDERGROUND FACILITIES OPERATOR or an organization designated by the ~~facility owner~~ UNDERGROUND FACILITIES OPERATOR at least two days, excluding Saturdays, Sundays and OTHER legal holidays, before the end of the validity period. ALL REQUESTS FOR FACILITY MARKINGS AND REQUESTS TO EXTEND THE VALIDITY PERIOD OF THE MARKINGS SHALL BE FOR THE PURPOSE OF EXCAVATING WITHIN THE VALIDITY PERIOD OF THE MARKINGS. AN EXCAVATOR THAT REQUESTS FACILITY MARKINGS SHALL LIMIT THE REQUEST TO AN AREA THAT CAN REASONABLY BE EXCAVATED WITHIN THE VALIDITY PERIOD OF THE MARKINGS. A PERSON WHO VIOLATES THIS SUBSECTION IS LIABLE TO THE ONE-CALL NOTIFICATION CENTER AND TO ALL AFFECTED UNDERGROUND FACILITIES OPERATORS FOR ANY RESULTING DAMAGES, COSTS AND EXPENSES.

H. Nothing in this section shall be construed to prevent an excavator and an underground ~~facility owner~~ FACILITIES OPERATOR from holding a preconstruction conference regarding marking and location of underground facilities and entering into a mutually agreeable written schedule or written arrangement for satisfying the requirements of this section, except that this subsection does not eliminate the excavator's obligation to notify the ~~facility owner~~ UNDERGROUND FACILITIES OPERATOR TO LOCATE AND mark excavation sites under subsection B of this section based on the actual construction schedule.

I. FOR ABANDONED AND APPARENTLY ABANDONED UNDERGROUND FACILITIES:

1. The ~~owner of an~~ underground ~~facility~~ FACILITIES OPERATOR shall notify the excavator whether the facility is active or abandoned. AN INACTIVE FACILITY SHALL BE CONSIDERED ACTIVE FOR PURPOSES OF THIS SUBSECTION. THIS SECTION DOES NOT OBLIGATE ANY PERSON TO REPRESENT THAT AN UNDERGROUND SEWER FACILITY IN ANY PUBLIC STREET, ALLEY, RIGHT-OF-WAY DEDICATED TO PUBLIC USE OR UTILITY EASEMENT IS ABANDONED IF IT WAS INSTALLED ON OR BEFORE DECEMBER 31, 2005 AND IT IS NOT OWNED BY AN UNDERGROUND FACILITIES OPERATOR OF A SEWER SYSTEM.

2. For an underground facility abandoned after December 31, 1988 or covered by installation records prepared under section 40-360.30, subsection A, the ~~owner of the facility~~ UNDERGROUND FACILITIES OPERATOR may not advise or represent to the excavator that a facility or portion of a facility is abandoned unless the ~~owner~~ UNDERGROUND FACILITIES OPERATOR has verified, by reference to installation records or by testing, that the facility or portion is actually abandoned and not merely inactive. For all other abandoned or apparently abandoned underground facilities, each one-call notification center shall establish a method of providing personnel from a ~~facility owner~~ AN UNDERGROUND FACILITIES OPERATOR qualified to safely inspect and verify that the facility is abandoned or active and a method for reimbursing the verifying ~~facility owner~~ UNDERGROUND FACILITIES OPERATOR for the costs incurred. The reimbursement method may not include any charge or expense to the excavator. ~~An inactive facility shall be considered active for purposes of this article. For all purposes under this article, a facility owner,~~

1 ~~excavator or other person subject to this article may~~ FOR THE PURPOSES OF
2 THIS ARTICLE, AN UNDERGROUND FACILITIES OPERATOR SHALL not represent that an
3 underground facility is abandoned, ~~or treat an underground facility as~~
4 ~~abandoned~~, unless the facility has been verified as abandoned pursuant to
5 this subsection.

6 3. FOR THE PURPOSES OF THIS ARTICLE, IF AN EXCAVATOR ENCOUNTERS AN
7 APPARENTLY ABANDONED UNDERGROUND FACILITY, THE EXCAVATOR SHALL NOT TREAT THE
8 UNDERGROUND FACILITY AS ABANDONED UNTIL THE EXCAVATOR HAS RECEIVED
9 NOTIFICATION THAT THE UNDERGROUND FACILITY IS ABANDONED PURSUANT TO PARAGRAPH
10 1 OF THIS SUBSECTION OR HAS NOTIFIED THE UNDERGROUND FACILITY OPERATOR OF THE
11 APPARENT ABANDONMENT AND HAS RECEIVED VERIFICATION OF ABANDONMENT PURSUANT TO
12 PARAGRAPH 2 OF THIS SUBSECTION.

13 J. ALL NEW AND ACTIVE UNDERGROUND FACILITIES INSTALLED IN ANY REAL
14 PROPERTY AFTER DECEMBER 31, 2005 SHALL BE INSTALLED WITH A DETECTIBLE
15 UNDERGROUND LOCATION DEVICE UNLESS THE FACILITY IS CAPABLE OF BEING DETECTED
16 FROM ABOVE GROUND WITH AN ELECTRONIC LOCATING DEVICE. A PERSON WHO VIOLATES
17 THIS SUBSECTION IS SUBJECT TO A CIVIL PENALTY IN AN AMOUNT NOT TO EXCEED FIVE
18 THOUSAND DOLLARS. THE BUILDING OFFICIAL SHALL ADMINISTER AND ENFORCE THIS
19 SUBSECTION FOR ALL UNDERGROUND FACILITIES EXCEPT THOSE THAT ARE INSTALLED FOR
20 A PUBLIC UTILITY OR MUNICIPAL CORPORATION. ANY PENALTIES RECEIVED BY THE
21 BUILDING OFFICIAL SHALL BE DEPOSITED IN THE MUNICIPALITY'S OR POLITICAL
22 SUBDIVISION'S GENERAL FUND, AS APPLICABLE.

23 K. Nothing in this section shall be construed as prohibiting the use
24 of warning tape, warning markers or any other warning device by the ~~owner of~~
25 ~~an underground facility~~ FACILITIES OPERATOR.

26 L. FOR EVERY UNDERGROUND FACILITIES OPERATOR OF A SEWER SYSTEM:

27 1. FOR THE PURPOSES OF THIS ARTICLE, AN UNDERGROUND FACILITIES
28 OPERATOR OF A SEWER SYSTEM IS RESPONSIBLE FOR LOCATING AND MARKING THE
29 UNDERGROUND SEWER FACILITIES OWNED BY ANOTHER PERSON PURSUANT TO SUBSECTION B
30 OF THIS SECTION IF THOSE UNDERGROUND FACILITIES ARE INSTALLED AFTER DECEMBER
31 31, 2005 AND ARE IN ANY PUBLIC STREET, ALLEY, RIGHT-OF-WAY DEDICATED TO
32 PUBLIC USE OR UTILITY EASEMENT.

33 2. IN PERFORMING THE MARKING REQUIRED BY THIS SUBSECTION, THE
34 UNDERGROUND FACILITIES OPERATOR OF THE SEWER SYSTEM SHALL LOCATE THE FACILITY
35 BY REFERRING TO INSTALLATION RECORDS OF THE FACILITY AND BY USING ONE OF THE
36 METHODS LISTED IN SUBSECTION D OF THIS SECTION.

37 3. THIS SUBSECTION DOES NOT OBLIGATE AN UNDERGROUND FACILITIES
38 OPERATOR OF A SEWER SYSTEM TO LOCATE AND MARK THE UNDERGROUND SEWER
39 FACILITIES OWNED BY ANOTHER PERSON IF THE CUSTOMER RECEIVING SEWER SERVICE
40 FROM THE UNDERGROUND SEWER FACILITY REFUSES TO GRANT PERMISSION TO THE
41 UNDERGROUND FACILITIES OPERATOR OF A SEWER SYSTEM TO ACCESS THE REAL PROPERTY
42 FOR THE PURPOSE OF ASCERTAINING THE LOCATION OF THE UNDERGROUND SEWER
43 FACILITY IN ANY PUBLIC STREET, ALLEY, RIGHT-OF-WAY DEDICATED TO PUBLIC USE OR
44 EASEMENT.

1 4. THIS SUBSECTION DOES NOT OBLIGATE AN UNDERGROUND FACILITIES
2 OPERATOR OF A SEWER SYSTEM TO MAINTAIN, CLEAN OR UNSTOP UNDERGROUND SEWER
3 FACILITIES OWNED BY ANOTHER PERSON.

4 Sec. 3. Section 40-360.23, Arizona Revised Statutes, is amended to
5 read:

6 40-360.23. Making excavation in careful, prudent manner;
7 liability for negligence; notice; response;
8 obliteration of marks; representative availability

9 A. Obtaining information as required by this article does not excuse
10 any person making any excavation from doing so in a careful and prudent
11 manner, nor shall it excuse such persons from liability for any damage or
12 injury resulting from his negligence.

13 B. After markings have been made pursuant to section 40-360.22, an
14 excavator shall notify either the ~~owner of an underground facility~~ FACILITIES
15 OPERATOR or an organization designated by the ~~owner~~ UNDERGROUND FACILITIES
16 OPERATOR if the excavator encounters an underground facility that has not
17 been located and marked or has been marked in the wrong location.

18 C. Unless it would interfere with compliance with commission rules or
19 requirements regarding maintenance or restoration of service and repair of
20 facilities, the ~~owner of an underground facility~~ FACILITIES OPERATOR shall
21 immediately respond to a notification under subsection B of this section for
22 emergencies involving injury or damage.

23 D. An excavator or a ~~facility owner~~ AN UNDERGROUND FACILITIES OPERATOR
24 shall not move or obliterate markings made pursuant to section 40-360.22,
25 subsection B or fabricate markings in an unmarked location for the purpose of
26 concealing or avoiding liability for a violation of or noncompliance with
27 this article.

28 E. ~~Owners of~~ Underground facilities OPERATORS in a county having a
29 population of more than seven hundred one thousand persons according to the
30 most recent United States decennial census shall have designated
31 representatives available and on call for excavators who by public works
32 contract specifications or municipal ordinances are required to work in
33 congested locations involving public streets, alleys or rights-of-way
34 dedicated to the public use during the night or on weekends. Night and
35 weekend telephone numbers to reach the designated representatives shall be
36 furnished to the excavator in writing within forty-eight hours after they are
37 requested for a specific location.

38 Sec. 4. Section 40-360.24, Arizona Revised Statutes, is amended to
39 read:

40 40-360.24. Notice of damage to underground facility

41 In the event of any damage to or dislocation of any underground
42 facility OR DETECTIBLE UNDERGROUND LOCATION DEVICE in connection with any
43 excavation the person responsible for the excavation operations shall
44 immediately notify the ~~owner of such facility~~ UNDERGROUND FACILITIES OPERATOR
45 and shall not attempt any repair, except temporary emergency repairs, to the

1 damaged facility OR DEVICE, EXCEPT THAT TEMPORARY EMERGENCY REPAIRS SHALL NOT
2 BE MADE BY AN EXCAVATOR, WITHOUT THE UNDERGROUND FACILITIES OPERATOR'S
3 CONSENT, TO A PUBLIC UTILITY'S OR MUNICIPAL CORPORATION'S NATURAL GAS,
4 ELECTRIC, PROPANE, HAZARDOUS LIQUID, COMMUNICATION, CABLE TELEVISION, SEWER
5 SYSTEM, WASTE WATER OR WATER FACILITIES. The excavation shall be left open
6 until the arrival of representatives of the ~~owner of the facility~~ UNDERGROUND
7 FACILITIES OPERATOR. Upon receipt of notice, the ~~owner of the~~ underground
8 ~~facility~~ FACILITIES OPERATOR shall dispatch its representatives promptly, but
9 in no event later than two working days, to examine the underground facility,
10 and, if necessary, effect repairs.

11 Sec. 5. Section 40-360.26, Arizona Revised Statutes, is amended to
12 read:

13 40-360.26. Damage of underground facility; liability to owner;
14 homeowner exemption

15 A. If any underground facility is damaged by any person IN VIOLATION
16 OF THIS ARTICLE as a result of failing to obtain information as to its
17 location, failing to take measures for protection of the facilities or
18 failing to excavate in a careful and prudent manner ~~as required by this~~
19 ~~article~~, the person is liable to the owner of the underground facility for
20 the total cost of the repair of the facility.

21 B. A ~~person~~ HOMEOWNER engaging in excavating in an express or implied
22 PRIVATE PROPERTY utility easement across property owned by ~~him~~ THE HOMEOWNER
23 is not liable to the owner OR OPERATOR of the underground facility damaged by
24 the ~~property owner~~ HOMEOWNER PURSUANT TO THIS SECTION if the damaged
25 underground facility is not buried or placed below ground in accordance with
26 the applicable standards, if the underground facility is not located within
27 the easement or if the ~~person~~ HOMEOWNER engaged in the excavation has
28 complied with section 40-360.22.

29 Sec. 6. Section 40-360.28, Arizona Revised Statutes, is amended to
30 read:

31 40-360.28. Civil penalty; liability

32 A. EXCEPT AS PROVIDED IN SECTION 40-360.22, SUBSECTION J, a person who
33 violates any provision of this article is subject to a civil penalty in an
34 amount not to exceed five thousand dollars to be imposed by the court in
35 favor of the state. Any penalties received by the state shall be deposited
36 in the STATE general fund.

37 B. If a violation of this article results in ~~physical contact with~~
38 DAMAGE TO an underground facility, the violator is liable to the owner of the
39 facility for all damages to the facilities and ALL costs, AND expenses, and
40 INCLUDING damages to third ~~parties~~ PERSONS, incurred by the owner of the
41 facility as a result of the ~~contact~~ DAMAGE.

42 C. If the ~~owner or~~ UNDERGROUND FACILITIES operator ~~fails~~ VIOLATES THIS
43 ARTICLE BY FAILING to locate AND MARK or BY incorrectly ~~locates~~ LOCATING the
44 underground facility, pursuant to this article, the ~~owner or~~ UNDERGROUND

1 FACILITIES operator becomes liable for resulting damages, costs and expenses
2 to the injured party.

3 D. This section is not applicable to an excavation made:

4 1. During an emergency which involves danger to life, health or
5 property if reasonable precautions are taken to protect underground
6 facilities.

7 2. In agricultural operations or for the purpose of finding or
8 extracting natural resources.

9 3. With hand tools on property owned or occupied by the person
10 performing the excavation while gardening or tilling such property.

11 Sec. 7. Section 40-360.30, Arizona Revised Statutes, is amended to
12 read:

13 40-360.30. Installation records of underground facilities

14 A. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, for all new
15 underground facilities, excluding service drops and service lines, installed
16 after December 31, 1988 in a public street, alley or right-of-way dedicated
17 to the public use, but not including any express or implied private property
18 utility easement, the ~~owner of an underground facility~~ FACILITIES OPERATOR
19 shall prepare, or cause to be prepared, installation records of the
20 underground facility, shall keep such records in its possession and shall
21 refer to such records in locating and marking pursuant to section 40-360.22,
22 SUBSECTION B. FOR ALL NEW SEWER FACILITIES INSTALLED AFTER DECEMBER 31, 2005
23 IN ANY PUBLIC STREET, ALLEY, RIGHT-OF-WAY DEDICATED TO THE PUBLIC USE OR
24 UTILITY EASEMENT, THE UNDERGROUND FACILITIES OPERATOR OF A SEWER SYSTEM SHALL
25 PREPARE, OR CAUSE TO BE PREPARED, INSTALLATION RECORDS OF THE UNDERGROUND
26 FACILITY, SHALL KEEP SUCH RECORDS IN ITS POSSESSION AND SHALL REFER TO SUCH
27 RECORDS IN LOCATING AND MARKING PURSUANT TO SECTION 40-360.22, SUBSECTION B.
28 TO ASSIST THE UNDERGROUND FACILITIES OPERATOR OF A SEWER SYSTEM IN
29 MAINTAINING SUCH RECORDS, A CERTIFIED SURVEY PLAN OF THE SEWER'S LOCATION IN
30 THE PUBLIC STREET, ALLEY, RIGHT-OF-WAY DEDICATED TO PUBLIC USE OR UTILITY
31 EASEMENT SHALL BE PROVIDED TO THE UNDERGROUND FACILITIES OPERATOR OF A SEWER
32 SYSTEM BY THE CUSTOMER RECEIVING SEWER SERVICE AS A CONDITION TO RECEIVING
33 SUCH SEWER SERVICE. Installation records shall also reflect, if applicable,
34 any field notes or other indications by the installer of the facilities that
35 the installation involved deviations or changes from installation standards,
36 instructions or designs and the correction of any inaccuracies found as a
37 result of locating or marking the underground facilities. Installation
38 records of an underground facility shall indicate if all or a portion of the
39 facility has been abandoned.

40 B. Installation records REQUIRED BY THIS SECTION are for the internal
41 use of the ~~facility owner~~ UNDERGROUND FACILITIES OPERATOR in locating its
42 underground facilities and are not intended to be relied on by others.

43 C. ~~B. After January 1, 1989,~~ Information contained in installation
44 records relating to the nature and location of underground facilities, but
45 not the installation records themselves, shall be made available ~~in a timely~~

1 manner WITHIN TEN WORKING DAYS and on a ~~need-to-know~~ CONFIDENTIAL basis to
 2 authorized persons who submit a written request and who are engaged in THE
 3 design of construction projects involving excavation in a public street,
 4 alley, ~~or~~ right-of-way dedicated to the public use OR UTILITY EASEMENT,
 5 excluding any express or implied private property utility easement. The
 6 ~~owner of an underground facility~~ UNDERGROUND FACILITIES OPERATOR shall make
 7 the same information available to authorized persons who are complying with a
 8 requirement imposed by contract providing for construction projects involving
 9 excavation in a public street, alley, ~~or~~ right-of-way dedicated to the
 10 public use, but excluding any express or implied private property utility
 11 easement, or by operation of law, to verify or confirm the nature and
 12 location of underground facilities. The ~~owner of the underground facility~~
 13 UNDERGROUND FACILITIES OPERATOR, on consultation with the authorized person,
 14 shall determine the appropriate manner and form for providing the
 15 information. The ~~owner of the underground facility~~ UNDERGROUND FACILITIES
 16 OPERATOR may indicate any portions of the information that are proprietary
 17 and require the authorized person to protect proprietary matters.

18 ~~B. The owner of an underground facility~~ UNDERGROUND FACILITIES
 19 OPERATOR, in its sole discretion, may satisfy the requirements of THIS
 20 subsection ~~C of this section~~ by allowing an authorized person to inspect or
 21 copy installation records themselves.

22 Sec. 8. Section 40-360.32, Arizona Revised Statutes, is amended to
 23 read:

24 40-360.32. One-call notification center membership; termination

25 ~~A. Every public utility, municipal corporation, underground facility~~
 26 ~~owner or person having the right to bury underground facilities~~ EVERY
 27 UNDERGROUND FACILITIES OPERATOR WHO IS OBLIGATED TO LOCATE AND MARK
 28 UNDERGROUND FACILITIES PURSUANT TO SECTION 40-360.22, SUBSECTION B, shall be
 29 a member of a one-call notification center, either statewide or serving each
 30 county in which such entity or person has underground facilities. Each
 31 one-call notification center shall establish a limited basis participation
 32 membership option, which may be made available to all members, but which must
 33 be made available for any member serving less than one thousand customers or
 34 any member irrigation or electrical district. ~~A facility owner~~ AN
 35 UNDERGROUND FACILITIES OPERATOR who elects limited basis participation
 36 membership ~~will~~ SHALL provide to the one-call notification center the
 37 location of its underground facilities solely by identifying the incorporated
 38 cities and towns, or for unincorporated county areas, by ~~identifying~~
 39 IDENTIFYING the townships, in which it has facilities. The service level
 40 provided to limited basis participation members by the one-call notification
 41 center is limited to providing excavators with the names and telephone
 42 numbers the excavators should contact to obtain facilities location. Each
 43 one-call notification center shall establish fair and reasonable fees for
 44 limited basis participation members, based on customer count, areas occupied
 45 or miles of underground facilities. WHEN ANY PERSON NEGLECTS OR REFUSES TO

1 PAY FEES WHEN DUE AND IS IN ARREARS FOR SIXTY DAYS, THE ONE-CALL NOTIFICATION
2 CENTER MAY TERMINATE THE MEMBERSHIP OF THAT PERSON WITHOUT NOTICE AND MAY
3 HAVE A CLAIM FOR FEES AND A SEPARATE CLAIM FOR DAMAGES FOR BREACH OF AN
4 ANCILLARY AGREEMENT. THE ONE-CALL NOTIFICATION CENTER MAY REFUSE TO
5 REINSTATE ANY PERSON'S MEMBERSHIP UNTIL THAT PERSON'S FEE IS PAID IN FULL.

6 ~~B. This section does not apply to an owner or occupant of real~~
7 ~~property where underground facilities are buried if the facilities are used~~
8 ~~solely to furnish services or commodities to that property and no part of the~~
9 ~~facilities is located in a public street, alley or right-of-way dedicated to~~
10 ~~public use.~~

APPROVED BY THE GOVERNOR APRIL 25, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2005.



Passed the House March 5, 2005

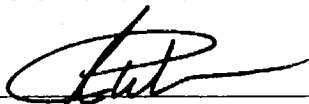
Passed the Senate April 14, 2005


by the following vote: 55 Ayes,

by the following vote: 30 Ayes,

0 Nays, 5 Not Voting

0 Nays, 0 Not Voting


Speaker of the House


President of the Senate


Chief Clerk of the House


Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

H.B. 2256

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

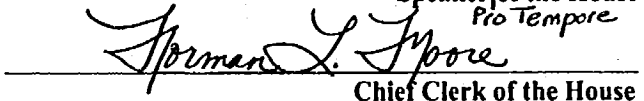
April 20, 2005,

by the following vote: 56 Ayes,

3 Nays, 1 Not Voting



Speaker of the House
Pro Tempore



Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

20th day of April, 2005

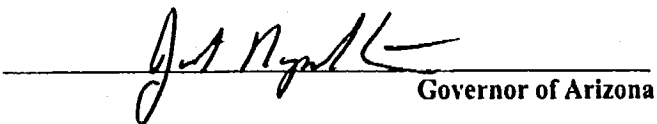
at 4:40 o'clock P. M.


Secretary to the Governor

Approved this 25 day of

April, 2005,

at 955 o'clock A M.


Governor of Arizona

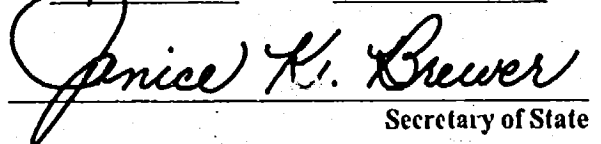
H.B. 2256

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 25 day of April, 2005,

at 4:33 o'clock P. M.


Secretary of State